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HEARING DATE: February 3, 2021
HEARING TIME: 1:00 p.m. PT
RESPONSE DUE: At Hearing
LOCATION: Telephonic

7 Richard M. Pachulski (*Pro Hac Vice*
8 Pending)
9 Ira Kharasch (*Pro Hac Vice* Pending)
10 Alan J. Kornfeld (*Pro Hac Vice* Pending)
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20 *Proposed Attorneys for Debtor and*
21 *Debtor in Possession*

22 **UNITED STATES BANKRUPTCY COURT**
23 **EASTERN DISTRICT OF WASHINGTON**

24 In re:
25 EASTERDAY RANCHES, INC.,
26 Debtor.

Chapter 11

Case No. 21-00141 (WLH)

**DECLARATION OF T. SCOTT
AVILA IN SUPPORT OF
DEBTOR'S BANKRUPTCY
PETITION AND EMERGENCY
"FIRST DAY" MOTIONS**

27 T. SCOTT AVILA declares:

28 1. I am a co-Chief Restructuring Officer of the above-captioned debtor and
debtor in possession, Easterday Ranches, Inc. (the "Debtor"). I am generally familiar
with the Debtor's business and financial affairs, and books and records. I am above
18 years of age and I am competent to testify.

2. I am authorized to submit this Declaration on behalf of the Debtor.
Except as otherwise indicated, all facts set forth in this Declaration are based upon my
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1 personal knowledge of the Debtor's operations and finances, information learned from
2 my review of relevant documents, and information I have received from the Debtor's
3 advisors. If I were called upon to testify, I could and would testify competently to the
4 facts set forth herein on that basis.

5 3. I submit this declaration (the "Declaration") in support of the Debtor's
6 bankruptcy petition and the following two "first day" motions: (a) *Debtor's*
7 *Emergency Motion for Interim and Final Orders Authorizing Debtor to Use Cash*
8 *Collateral* (the "Cash Collateral Motion") and (b) *Emergency Motion of Debtor for*
9 *Order (I) Authorizing Debtor to Continue Using Existing Cash Management System,*
10 *Bank Accounts, and Business Forms; and (II) Granting Related Relief* (the "Cash
11 Management Motion"). Capitalized terms not otherwise defined herein shall have the
12 same meanings as set forth in the foregoing motions.

13 **A. Company Background**

14 4. In 1958, Ervin Easterday moved his family and farming operation from
15 Nampa, Idaho to southeastern Washington, where he purchased 300 acres of
16 undeveloped land in the new Columbia Basin Reclamation Irrigation Project. Since
17 then, the Easterday family farm has grown to more than 18,000 acres of potatoes,
18 onions, corn, and wheat. The farm's grain products are sold to the Debtor – the
19 Easterday family's cattle business – where it is used to raise cattle for the Debtor's
20 sole customer, Tyson Fresh Meats, Inc. ("Tyson"), pursuant to that certain *Cattle*
21 *Feeding Agreement*, dated February 20, 2017 (as amended or supplemented, the
22 "Cattle Feeding Agreement").

23 **B. The Cattle Feeding Agreement**

24 5. The Debtor purchases and raises cattle for eventual slaughter. Its sole
25 customer is Tyson. The cattle purchased by the Debtor are located and raised at
26 various parcels of real property owned by the Debtor or certain non-Debtor affiliates,
27 which have been developed as feedlots (collectively, the "Feedlots"). The Feedlots
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are specialized facilities for the purpose of feeding, housing, and caring for cattle while the cattle mature to a sufficient weight and size to be processed by Tyson or its designees. As of February 1, 2021 (the “Petition Date”), there are approximately 54,000 head of cattle at the Feedlots at various levels of maturity, ranging from those of just 2-3 months in age to those who have reached a mature, slaughter weight, generally at 12-16 months old. Pursuant to the Cattle Feeding Agreement, Tyson is obligated to reimburse the Debtor, or otherwise fund, 100% of the procurement, feeding, and care cost of the cattle, which are deducted from the sale of the cattle when transferred to Tyson (or its affiliate) for processing pursuant to a formula more fully set forth in the Cattle Feeding Agreement.

C. Events Leading to the Commencement of the Debtor’s Chapter 11 Case

6. On January 24, 2021, Tyson filed a lawsuit against the Debtor in the Superior Court of the State of Washington for Franklin County (the “Tyson Lawsuit”) and concurrently filed a *Motion for the Appointment of Receiver* (the “Receiver Motion”). The Tyson Lawsuit alleges, *inter alia*, that the Debtor’s former president, Cody Easterday, purportedly engaged in fraudulent “forward billing” practices, resulting in Tyson’s overpayment of over \$200 million for the purchase and feeding of “non-existent” or “missing” cattle due to the submission of fraudulent invoices and records pursuant to the Cattle Feeding Agreement. The Receiver Motion was set for hearing during the afternoon of February 1, 2021.

7. As a result of the purported fraudulent activity, Tyson unilaterally reduced its payments to the Debtor under the Cattle Feeding Agreement, thereby significantly reducing the Debtor’s ability to fund ongoing operations, including the costs associated with caring for and feeding the cattle located on the Feedlots.

8. Notwithstanding the Tyson Lawsuit, in an effort to preserve the Debtor’s business operations and protect the cattle in the near term, Tyson has advanced (on a

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1 prepetition basis) certain costs associated with the care and feeding of the cattle
2 located at the Feedlots directly to the Debtor's vendors or other parties.

3 **D. The Debtor's Management**

4 9. On January 31, 2021, the Debtor's shareholders, who also comprised the
5 Debtor's then-constituted Board of Directors, Cody Easterday, Debby Easterday, and
6 Karen L. Easterday (collectively, the "Former Board"), executed that certain *Action by*
7 *Written Consent*, to elect Craig A. Barbarosh, R. Todd Neilson, and Thomas
8 Saunders, V, as the Debtor's directors (collectively, the "Independent Board").
9 Thereafter and on that same date, each member of the Former Board resigned their
10 positions as directors and officers of the Debtor.

11 10. Importantly, the members of the Independent Board were selected for
12 their experience and expertise in the cattle and/or restructuring industry. More
13 particularly, Mr. Barbarosh is a nationally recognized restructuring attorney with over
14 twenty-five years of experience. Mr. Barbarosh also has extensive experience serving
15 as director for many troubled or distressed companies. Mr. Neilson has over thirty
16 five years of experience in the restructuring space with a particular emphasis on public
17 and forensic accounting, having previously served as a special agent for the Federal
18 Bureau of Investigation specializing in accounting investigations. Mr. Neilson also
19 has experience serving as a trustee, examiner, financial consultant, and advisor for
20 companies in bankruptcy. Finally, as a sixth-generation cattleman, Mr. Saunders
21 brings a lifetime of experience in the ranching and cattle business to the Independent
22 Board. Mr. Saunders currently owns and operates the 7,000 acre Twin V Ranch
23 located near Fort Worth, Texas, where he manages the Twin V Ranch's cow-calf and
24 equine businesses.

25 11. On January 31, 2021, the Independent Board met and unanimously voted
26 to appoint co-Chief Restructuring Officers, myself and Peter Richter. On that same
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1 date and given the imminent hearing on the Receiver Motion, the Independent Board
2 also voted to authorize the commencement of this chapter 11 case.

3 **E. Prepetition Capital Structure**

4 **i. Revolving Loan Agreement**

5 12. The Debtor and its non-debtor affiliate, Easterday Farms Partnership
6 (“Farms” and together with the Debtor, the “Borrowers”), are parties to that certain
7 *Revolving Loan Agreement*, dated September 3, 2020 (as amended, the “Revolving
8 Loan Agreement”), by and among the Borrowers, Cody Easterday, Debby Easterday,
9 Karen Easterday, and Gale Easterday as guarantors (collectively, the “Guarantors”),
10 and Washington Trust Bank, as lender (the “Washington Trust”).

11 13. The Revolving Loan Agreement provides for a \$45 million revolving
12 credit facility that is purportedly secured by all goods, equipment, farm equipment,
13 inventory, fixtures, accounts, deposit accounts, chattel paper, documents, general
14 intangibles, instruments, investment property, and letter of credit rights.

15 14. As of the Petition Date, the outstanding principal balance of the
16 Revolving Loan Agreement was approximately \$45 million.

17 15. On January 15, 2021, Washington Trust sent a letter to Farms asserting
18 the existence of certain non-monetary defaults under the Revolving Loan Agreement,
19 principally relating to certain reporting obligations, but agreeing to forbear upon the
20 exercise of remedies until January 31, 2021 to allow Farms to cure the purported
21 default, provided that no further default occur pursuant to the terms of the Revolving
22 Loan Agreement.

23 16. On January 26, 2021, Washington Trust sent a *Notice of Default* to the
24 Borrowers and Guarantors, asserting certain defaults under the Revolving Loan
25 Agreement related to the filing of the Tyson Lawsuit and the untimely death of
26 Guarantor Gale Easterday in December 2020.

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ii. Mortgage Loans

17. The Borrowers are also party to that certain *Loan Agreement* dated February 12, 2020 (the “Term Loan”), by and among the Borrowers, as borrowers, the Guarantors, and the Prudential Insurance Company of America, as lender. As of the Petition Date, the aggregate outstanding principal amount of the Term Loan is \$50 million.

18. The Term Loan is secured by that certain *Mortgage, Security Agreement, Fixture Filing with Assignment of Rents and Proceeds, Leases and Agreements* dated February 12, 2020, which purportedly covers certain of the Borrowers’ owned real estate.

19. The Debtor is party to that certain *Fixed Interest Rate Promissory Note* dated June 4, 2015 (the “Fixed Rate Loan”), by and among the Debtor, as borrower, and Farms and the Guarantors, as guarantors, and AXA Equitable Life Insurance Company, as lender. As of the Petition Date, the aggregate outstanding principal amount of the Fixed Rate Loan is \$25.5 million.

20. The Fixed Rate Loan is secured by that certain *Mortgage, Security Agreement, Assignment of Rents and Fixture Filing* dated June 4, 2015, which purportedly covers certain of the Debtor’s and Farms’ owned real estate.

iii. General Unsecured Claims

21. In addition to its secured debt, the Debtor’s books and records reflect approximately \$12.5 million in unsecured debt incurred in the ordinary course of business, principally comprised of trade payables, a portion of which is payable to Farms in the approximate amount of \$388,341.

22. As of the Petition Date, the Debtor has approximately 76 employees.

F. Cash Collateral Motion

23. Through the Cash Collateral Motion, the Debtor seeks interim and final orders: (i) authorizing the Debtor, in its discretion, to use cash collateral in accordance

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1 with the Budget, including any funds prepaid to the Debtor by Tyson, (ii) granting
2 Washington Trust certain adequate protection in the form of new liens and
3 superpriority claims against the Debtor's estate, to the extent of any diminution in
4 value of Washington Trust's prepetition interests in the Debtor's assets, and (iii)
5 granting such other and further relief as is just and proper under the circumstances.

6 24. The Debtor commenced this bankruptcy case with minimal cash on hand.
7 Tyson is the Debtor's sole customer and all of the Debtor's operating receipts are
8 generated from its relationship with Tyson. In order to fund the Debtor's ongoing
9 administrative and operating expenses, including the costs associated with feeding and
10 caring for the cattle, the Debtor requires immediate and urgent funding that only
11 Tyson is willing to provide through prepayments against amounts accruing
12 postpetition under the Cattle Feeding Agreement. The Debtor projects that the feed on
13 hand will last no later than Thursday, February 4, 2021, and without funding from
14 Tyson the Debtor will not have sufficient cash to purchase new feed. Hence, absent
15 prompt receipt and access to the funds contemplated by this Motion, the Debtor would
16 face immediate and irreparable harm and would be forced to terminate operations,
17 which would have the drastic effect of putting approximately 54,000 cattle at risk of
18 death.

19 25. Tyson is prepared to prepay the Debtor's estate certain amounts accruing
20 postpetition under the Cattle Feeding Agreement in order that the estate will have cash
21 on hand. The estate will use that cash to satisfy the obligations set forth in the Budget.
22 To the extent that Washington Trust asserts a lien in any cash collateral of the Debtor,
23 including the funds expected to be prepaid by Tyson, the Debtor filed the Cash
24 Collateral Motion.

25 26. I believe that the Debtor's proposed use of cash collateral, including any
26 funds to be prepaid by Tyson to the Debtor, represents a sound exercise of business
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1 judgment. I further believe that the Debtor's decision to access cash collateral is
2 entirely consistent with the Debtor's fiduciary duties to the estate.

3 27. I therefore urge the Court to approve the proposed use of cash collateral
4 from Tyson on the terms set forth in the Cash Collateral Motion.

5 **G. Cash Management Motion**

6 28. Through the Cash Management Motion, the Debtor seeks the entry of
7 interim and final orders authorizing the Debtor to continue to use its cash management
8 system, including the continued maintenance of its existing bank accounts and
9 business forms.

10 29. The relief requested in the Cash Management Motion is sought on an
11 emergency basis because the uninterrupted use of the Debtor's cash management
12 system is essential to the Debtor's ability to maximize its postpetition operations and
13 adjust smoothly to being an operating debtor in possession. Reestablishing and
14 reconnecting deposits and billings to new accounts would be impractical, costly, and
15 an inefficient use of the Debtor's resources.

16 30. In the ordinary course of business, the Debtor utilizes an integrated cash
17 management system to collect, concentrate, and disburse funds generated by or
18 received for its operations (the "Cash Management System"). In broad terms, the
19 Debtor's Cash Management System is similar to the cash management systems used
20 by other business operations of a comparable size and complexity.

21 31. The Cash Management System is tailored to meet the Debtor's operating
22 needs as an operator of certain feedlots at which it houses, cares for, and raises cattle
23 for the benefit of Tyson. The Cash Management System enables the Debtor to
24 efficiently collect and distribute cash generated by its business, pay its financial
25 obligations, control and monitor funds available, comply with requirements of its
26 financing arrangements, reduce administrative expenses, and obtain accurate account
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1 balances and other financial data. It is critical that the Cash Management System
2 remain intact during this Chapter 11 Case.

3 32. The Cash Management System currently consists of three (3) bank
4 accounts (collectively, the “Accounts”), listed on Exhibit A to the Cash Management
5 Motion. The Accounts are located Washington Trust Bank, Mechanics Bank, and US
6 Bank. I am informed that each of these banks is designated as an authorized
7 depository by the Office of the United States Trustee for Region 18.

8 33. All of the Accounts are operational in nature (e.g., payroll, operating
9 disbursements, and operating deposits). As of the Petition Date, the aggregate balance
10 of the Accounts was approximately \$213,000.

11 34. For the foregoing reasons, I urge the Court to approve the continued use
12 of the Debtor’s Cash Management System as described in the Cash Management
13 Motion.

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1 I declare under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct.

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4 DATED this 2nd day of February 2021.

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6 /s/ T. Scott Avila

7 T. Scott Avila
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